

§ 2423.22

Judge. Unless otherwise specified in subparts B or C of this part, or otherwise directed or approved by the Administrative Law Judge:

(1) Prehearing motions shall be filed at least 10 days prior to the hearing, and responses shall be filed within 5 days after the date of service of the motion;

(2) Responses to motions made during the hearing shall be filed prior to the close of hearing;

(3) Posthearing motions shall be filed within 10 days after the date the hearing closes, and responses shall be filed within 5 days after the date of service of the motion; and

(4) Motions to correct the transcript shall be filed with the Administrative Law Judge within 10 days after receipt of the transcript, and responses shall be filed within 5 days after the date of service of the motion.

(c) *Post-transmission motions.* After the case has been transmitted to the Authority, motions shall be filed with the Authority. Responses shall be filed within 5 days after the date of service of the motion.

(d) *Interlocutory appeals.* Motions for an interlocutory appeal of any ruling and responses shall be filed in accordance with this section and § 2423.31(c).

§ 2423.22 Intervenor.

Motions for permission to intervene and responses shall be filed in accordance with § 2423.21. Such motions shall be granted upon a showing that the outcome of the proceeding is likely to directly affect the movant's rights or duties. Intervenor may participate only: on the issues determined by the Administrative Law Judge to affect them; and to the extent permitted by the Judge. Denial of such motions may be appealed pursuant to § 2423.21(d).

§ 2423.23 Prehearing disclosure.

Unless otherwise directed or approved by the Judge, the parties shall exchange, in accordance with the service requirements of § 2429.27(b) of this subchapter, the following items at least 14 days prior to the hearing:

(a) *Witnesses.* Proposed witness lists, including a brief synopsis of the expected testimony of each witness;

5 CFR Ch. XIV (1–1–05 Edition)

(b) *Documents.* Copies of documents, with an index, proposed to be offered into evidence; and

(c) *Theories.* A brief statement of the theory of the case, including relief sought, and any and all defenses to the allegations in the complaint.

§ 2423.24 Powers and duties of the Administrative Law Judge during prehearing proceedings.

(a) *Prehearing procedures.* The Administrative Law Judge shall regulate the course and scheduling of prehearing matters, including prehearing orders, conferences, disclosure, motions, and subpoena requests.

(b) *Changing date, time, or place of hearing.* After issuance of the complaint or any prehearing order, the Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, change the date, time, or place of the hearing.

(c) *Prehearing order.* (1) The Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, issue a prehearing order confirming or changing:

(i) The date, time, or place of the hearing;

(ii) The schedule for prehearing disclosure of witness lists and documents intended to be offered into evidence at the hearing;

(iii) The date for submission of procedural and substantive motions;

(iv) The date, time, and place of the prehearing conference; and

(v) Any other matter pertaining to prehearing or hearing procedures.

(2) The prehearing order shall be served in accordance with § 2429.12 of this subchapter.

(d) *Prehearing conferences.* The Administrative Law Judge shall conduct one or more prehearing conferences, either by telephone or in person, at least 7 days prior to the hearing date, unless the Administrative Law Judge determines that a prehearing conference would serve no purpose and no party has moved for a prehearing conference in accordance with § 2423.21. If a prehearing conference is held, all parties